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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

April 16, 2020

The Honorable Steven T. Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Jerome H. Powell
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Secretary Mnuchin and Chairman Powell:

Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provides $500 billion in emergency relief in order to provide liquidity to eligible businesses, States, municipalities and Tribes related to losses incurred as a result of COVID-19. Due to the unprecedented shutdown of businesses to prevent the spread of COVID-19, bold and dramatic steps are needed to limit the depth of the economic shock the country is currently experiencing, and to provide conditions for a quick and robust recovery once the economic restrictions are lifted.

On April 9, 2020, the Federal Reserve Board and Department of Treasury announced new and expanded lending programs to provide up to $2.3 trillion in loans. This is a powerful step forward to support the flow of credit in the economy and I request that you update the facilities' term sheets accordingly to address the issues raised below.

Paycheck Protection Program

The CARES Act authorizes up to $349 billion in forgivable loans through the Small Business Administration's Paycheck Protection Program (PPP), aimed at keeping small businesses up and running, and primarily to keep their workers employed during the COVID-19 crisis. That initial $349 billion allocated to the SBA's PPP has now been completely depleted. As a result, Congress must immediately pass additional funding for the PPP to continue providing critical support so that small businesses and their employees can stay afloat during this challenging

crisis. The Fed announced a facility to bolster the effectiveness of the PPP by supplying liquidity to participating financial institutions through term financing backed by PPP loans to small businesses. The Paycheck Protection Program Liquidity Facility (PPPLF) will extend credit to eligible financial institutions that originate PPP loans, taking the loans as collateral at face value.

Financial institutions have raised many questions about the PPP in recent weeks, including with respect to the applicable interest rate, Bank Secrecy Act and anti-money laundering requirements, affiliation rules, certifications and verifications, liability, the speed and efficiency of technology platforms and more. The SBA and Treasury have addressed and continue to address many of these questions through periodic updates to guidance. However, there are still several outstanding issues, including:

- Whether participation in the PPP will be made available to a range of non-depository institutions and other lenders that are not currently approved, such as Community Development Financial Institutions;

- Providing flexibility so that small businesses in certain industries that are currently ineligible under existing SBA regulations may access the PPP;

- Providing clear communication about the PPP, including, but not limited to, guidance on what the secondary market looks like, guidance on what is required for loan forgiveness and how it will work, a more comprehensive hold harmless agreement, contact information for technical support and an updated list of approved lenders;

- Clarifying through additional guidance how to determine and calculate PPP loan forgiveness;

- Taking additional steps to address issues with technology supporting the Program, including malfunctions and delays while processing loans (and providing additional flexibility on timeframes for disbursing loans as a result) and onboarding new bank employees to use technology;

- Making any necessary changes to various loan terms and conditions to achieve the broadest possible participation by both borrowers and lenders, and to ensure new and existing customers' needs are being met, including to applicable interest rates, loan disbursement timing, loan uses and verification;

- Identifying opportunities to extend the PPP loans' maturity beyond two years, within the maximum maturity specified in the CARES Act; and

- Working with the Small Business Administration to acknowledge the good faith effort by banks to push forward originating and funding PPP loans despite issues emanating in the Program and a lack of full guidance, and honor the guarantees associated with those loans.

A number of financial institutions have stressed the important role that a Federal Reserve facility for PPP loans ultimately plays in the Program's effectiveness. As this facility becomes operational, it is imperative that access to the PPPLF be broad, including to a wide variety of non-depository financial institutions, and that it be easy and quick to facilitate funding under the PPPLF.

Main Street Lending

The Federal Reserve announced two Main Street Lending Programs – the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF). Although the facilities share some aspects, they each meet different needs on loan type, size and terms. The facilities ensure that credit flows to small and mid-sized businesses with the purchase of up to $600 billion in loans. Using funding from the CARES Act, Treasury will provide $75 billion in equity to the facilities. Given that financial institutions will retain a five percent share in an eligible loan, the following needs to be addressed to ensure broad participation by lenders and borrowers:

- Set earnings before interest, taxes, depreciation and amortization (EBITDA) multiples that provide for the broadest possible access for small and medium-sized organizations;

- Amend language pertaining to the debt considered in relation to the EBITDA multiples (*i.e.*, "existing outstanding and committed but undrawn debt") such that it appropriately considers debt's funding terms and covenants, and reflects the amount that a business is actually able to borrow, and provide guidance on whether lenders can make adjustments to EBITDA;

- Provide greater clarity on access to the facilities for a range of small and medium-sized organizations that are either not traditionally profit-seeking entities, such as non-profits, universities and hospitals, or those organizations that do not typically use EBITDA multiples;

- Adjust the facilities' $1 million minimum loan size and provide flexibility for longer loan maturities to avoid unintentionally impeding access to the facilities for a vast array of otherwise qualified small and medium-sized businesses;

- Provide certainty that the underwriting and lending decisions ultimately lie with the bank, regardless of any borrower meeting the basic minimum criteria under the terms sheets, and provide greater clarity around how and when a borrower's creditworthiness is to be determined;

- Provide flexibility for financial institutions to utilize a reference rate other than the Secured Overnight Financing Rate (SOFR), which will help ensure the reference rate is one with which both the borrower and lender are familiar;

- Provide flexibility for sectors of the economy that are required to pay dividends as a condition of their company's legal structure; and

- Permit U.S. branches and agencies of non-U.S. banks to qualify as U.S. businesses, thereby allowing them to act as intermediaries for their customers with regard to these facilities.

These Main Street Lending Facilities provide a lifeline to an important subset of our economy, many of which may not qualify for other sources of assistance. Incorporating widespread restrictions in these facilities could unintentionally harm employees, businesses and investors, rendering the facilities ineffective. To avoid unintended consequences, the Federal Reserve and Treasury should avoid adding new barriers and remove any existing barriers that inhibit the broadest possible access to these facilities.

Corporate Credit and Asset-Backed Securities

The Federal Reserve also announced that it will expand the size and scope of the Primary Market Corporate Credit Facility (PMCCF) and Secondary Market Corporate Credit Facility (SMCCF), as well as the Term Asset-Backed Securities Loan Facility (TALF). Together, these three programs will now support up to $850 billion in credit backed by $85 billion in credit protection provided by the Treasury. Although this initial expansion of the size and scope of these three facilities is an encouraging first step, additional steps will likely be needed to stabilize credit markets:

- Seek input on how to expand the size and scope of these facilities as appropriate to ensure the stability of both investment grade and non-investment grade markets; and

- Conform reference to both "major" and "eligible" nationally recognized statistical ratings organizations (NRSROs) so that they are consistent and the applicable NRSRO is clear.

Municipals

The Federal Reserve established the Municipal Liquidity Facility (MLF) to help state and local governments manage cash flow stresses caused by COVID-19. The MLF will offer up to $500 billion in lending to states and municipalities with the Treasury providing $35 billion of credit protection to the Federal Reserve for the MLF using funds appropriated by the CARES Act. As it stands under the MLF's term sheet, no city or county in Idaho would qualify, which precludes rural communities from receiving significant and critical assistance in response to COVID-19. In addition to larger and more urban communities, States, cities, municipalities and Tribes with smaller and more rural populations have also been materially affected by COVID-19. All States have a significant need for assistance in response to COVID-19, and a minimum guarantee of assistance to all States should be established to ensure that no State is left without:

- In accordance with Title IV, update the terms so cities, counties, and tribes in rural states like Idaho can apply rather than be automatically excluded. The facility needs to work for both rural and urban states; and

- Provide more clarity on pricing based on an eligible issuer's rating, disclosure to the public per state and taxpayer protections.

Even with these newly-announced facilities and the expansion of the size and scope of certain existing facilities, there remains significant funding provided by Title IV of the CARES Act to continue expanding these facilities and to address other troubled areas, such as the mortgage servicing industry. The Federal Reserve and Treasury should provide guidance on how they are prioritizing the next tranche of emergency lending as financial markets and economic conditions change.

I appreciate the hard work of the Federal Reserve and Treasury to launch a wide range of facilities and programs quickly to provide support to financial markets and the broader economy. As these programs and facilities become operational and you look to bring new facilities online, it is critical that you communicate fully with targeted organizations, and that terms and conditions be structured prudently to ensure that support makes it to the intended organizations in a timely and efficient manner. Additionally, given the state of the economy and employment as a result of working to stop the spread of COVID-19, it is important that the Treasury and Federal Reserve get these facilities operational and lending to the real economy in short order. Please update the facilities' terms sheets accordingly to quickly address these issues.

Sincerely,

Mike Crapo
Chairman